

Appl. No. 10/719,076
Amdt. Dated 28-Feb-05
Reply to Office Action of October 29, 2004
Attorney Docket No. : 6045-006

Remarks/Arguments

In the Office Action dated October 29, 2004 the Examiner rejected each of pending claims 1-8 under 35 U.S.C. §102(e) as being anticipated by Daniele U.S. Patent No. 6,733,056 and under 35 U.S.C. §102(b) as being anticipated by McMath U.S. Patent No. 4,245,411. These are the only bases for rejection stated of record.

Background of the Law

In order to establish proper anticipation under 35 U.S.C. §102, each and every element of the claimed invention must be disclosed in a single prior art reference. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). The claimed elements either be inherent or disclosed expressly in the single prior art reference *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 7 USPQ2d 1057 (Fed. Cir. 1988) and must be arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989). The absence from the reference of any claimed element necessarily negates anticipation. *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 220 USPQ 81 (Fed. Cir. 1986).

Remarks

The Examiner's reliance upon the either the Daniele reference or the McMath reference is inappropriate under 35 U.S.C. §102(b) as each reference fails to teach, either expressly or implicitly, the elements claimed.

Applicant has amended the claims by canceling originally filed Claims 1-8 and submitting new Claims 9 to 20. These amendments are not being made for purposes of traversing the prior art under 35 U.S.C. §102(b) or (e) or for purposes of 35 U.S.C. §112, first or second paragraph. Rather, these amendments are made in order to more clearly state and define the subject matter regarded as the invention.

Applicant respectfully submits that the newly submitted Claims 9-10 define patentable subject matter over the prior art cited and of record in this application.

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The Daniele Reference does not Anticipate a Device Having an Arcuate Forwardly Extending Handle

Each of the pending claims 9-20 require that the handle portion be an "arcuate handle comprising a rearwardly extending projection integral with the planar base, and being curved upwardly from the planar base and generally forwardly toward the open end in an arcuate manner forming continuous curve from the planar base forming continuous curve from the planar base." While the Daniele reference discloses a scoop utensil having a planar base and upstanding lateral side walls, the main feature of the Daniele reference is that the floor 13 of the Daniele device merges with the handle portion 21 along a smoothly continued intersection 23. The handle 21 gently arches or curves *rearwardly* from the floor 13 of the pan to fit comfortably in the hand of the user. (Col. 3, lines 18-29; Figs 1- 3). The handle 21 has a generally oval tubular cross-sectional shape which curves upwardly and rearwardly from the floor 13 of the pan at the contoured intersection 23 and is then formed into the oval tubular shape of the handle.

This configuration is exactly the opposite of the present invention, as claimed. Specifically, in the presently claimed invention, the handle is formed by a rearward projection of the planar base which is curved upward and forward toward the open end of the planar base (Claims 1 and 20) to form either a generally circular or generally C-shaped transverse cross-sectional shape (Claims 10, 11, 18, 19). Moreover, as claimed in Claims 16-17, the first and second lateral side walls include a rearwardly projecting flange which encloses opposing ends of the arcuate handle. This feature is clearly and manifestly absent from the device disclosed in the Daniele reference. Moreover, as claimed in Claims 12-14, the terminating end edge of the handle portion is not continuous with the planar base as is disclosed and required by the Daniele reference. Finally, as claimed in Claim 15, the device is fabricated of stainless steel, a material specifically excluded by the Daniele reference due to the need to form the handle in the manner disclosed which specifically contemplates manufacture as a single monolithic injection molded plastic structure. (Col. 4, lines 24-35).

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Accordingly, based upon the foregoing express disclosure and teaching of the Daniele reference, express claimed elements of the presently pending claims are clearly not present in the reference, which is, therefore, inappropriate as a basis for anticipation under 35 U.S.C. §102(e). Applicant, therefore suggests that the pending claims are patentably distinct from and allowable over the Daniele reference.

The McMath Reference does not Anticipate a Culinary Device Having an Arcuate Forwardly Extending Handle

The McMath reference is a snow pusher/lifter and, therefore, is part of a body of non-analogous art. This is further evidenced by the difference in classification between the cited reference and the present invention. The present invention was preliminarily classified in U.S. Class 220 pertaining to receptacles, while the McMath reference is classified in U.S. Class 37/265 relating to manually powered pusher-type snow scoops. Accordingly, Applicant respectfully submits that the McMath reference is in a non-analogous field of art and, therefore, inappropriate as a reference under 35 U.S.C. §102(b).

Notwithstanding the foregoing, however, each of the pending claims 9-20 require that the handle portion be an "arcuate handle comprising a rearwardly extending projection integral with the planar base, and being curved upwardly from the planar base and generally forwardly toward the open end in an arcuate manner forming continuous curve from the planar base forming continuous curve from the planar base." While the McMath reference arguably discloses a scoop device having a planar base 26 and upstanding lateral side walls 20, the handle in McMath is formed from a rearward projection formed from the terminal end of the side-walls 20 and not being extensive from the planar base 26 in a manner analogous to that of the pending claims. (See. Figs 1-2). The handgrips 28 of McMath are merely openings in the transverse top 30 and do not have a structure remotely analogous to the arcuate handle of the claimed invention.

Accordingly, based upon the foregoing express disclosure and teaching of the McMath reference, express claimed elements of the presently pending claims are clearly

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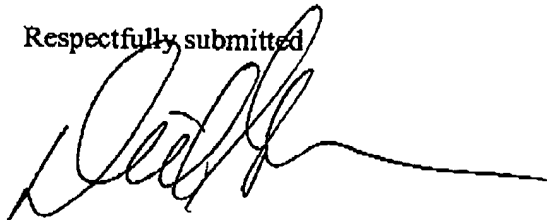
not present in the reference, which is, therefore, inappropriate as a basis for anticipation under 35 U.S.C. §102(b). Applicant therefore suggests that the pending claims are patentably distinct from and allowable over the McMath reference.

This Amendment Letter is being concurrently filed with a Transmittal Letter which includes a claim fee calculation and any applicable requests for extension of time which may be required for the proper presentation and consideration of the present amendments. While no additional fees other than those stated in the Transmittal Letter are believed required in connection with the filing of this amendment, the Director is hereby authorized to deduct any such fees from Deposit Account No. 18-2000 of which the undersigned is an authorized signatory.

A Notice of Change of Corresponding Attorney is being concurrently filed.

Applicant solicits the Examiner's favorable reconsideration of the rejections of record and submits that the presently pending claims are allowable over the art cited and on record, and therefore requests that Claims 9-20 be allowed.

Respectfully submitted



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